

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

USA,

Plaintiff,

v.

SIMPSON,

Defendant.

Case No. [11-cr-00832-SI-3](#)

**ORDER GRANTING MOTION FOR
COMPASSIONATE RELEASE**

Re: Dkt. No. 223

On April 29, 2020, defendant Ella Mae Simpson moved this Court for an order granting her compassionate release from Federal Correctional Institution, Dublin, California. Dkt. Nos. 223, 225. On February 5, 2013, this Court sentenced Ms. Simpson to 120 months in custody for her role in a conspiracy to distribute oxycodone. Dkt. No. 223 at 2. On March 16, 2013, Ms. Simpson self-surrendered. *Id.* She has served 85 months of custody plus approximately 13 months of good time credit, for a total of 98 months, and has a release date set for September 14, 2021. *Id.*

18 U.S.C. § 3582(c) provides that a “court may not modify a term of imprisonment once it has been imposed except . . . upon motion of the Director of the Bureau of Prisons, or upon motion of the defendant.” A defendant may bring a § 3582(c) motion after she has “fully exhausted all administrative rights to appeal a failure of the Bureau of Prisons” to bring the motion on her behalf, or after “the lapse of 30 days from the receipt of such a request by the warden of the defendant’s facility, whichever is earlier.” 18 U.S.C. § 3582(c)(1)(A).

“[A]fter considering” the sentencing factors from 18 U.S.C. § 3553(a) “to the extent that they are applicable,” a court may grant the motion to reduce the defendant’s sentence in one of two circumstances. First, “if it finds that . . . extraordinary and compelling reasons warrant such a reduction.” *Id.* § 3582(c)(1)(A)(i). Second, if the defendant is at least 70 years of age, and meets

other conditions not applicable here. See *Id.* § 3582(c)(1)(A)(ii).

Ms. Simpson argues extraordinary and compelling reasons warrant compassionate release where she: (1) is 62¹ years old (Dkt. No. 223 at 2²), (2) has served 98 months -- over 80% -- of her 120 month sentence (*Id.*), and (3) has pre-existing conditions including asthma and diabetes (see Dkt. No. 225), making her especially vulnerable to Covid-19 which is sweeping through the Country including prisons.

The government opposes Ms. Simpson's motion on procedural grounds. Dkt. No. 228 at 2. Namely, the government argues before Ms. Simpson may properly petition this Court she must exhaust her administrative remedies with the Bureau of Prisons. *Id.* at 3-7. Ms. Simpson petitioned the Bureau of Prisons for compassionate release on April 24, 2020 – thus she will not have exhausted her administrative remedies until May 22, 2020. However, in its opposition, the government also admits Bureau of Prison documents reflect Ms. Simpson has “a variety of medical issues [including] ... pulmonary/respiratory disease.” *Id.* at 2. Further, the government states that “[w]hile [it] does not believe the Court has jurisdiction at present to grant the motion [for compassionate release], should the Court obtain jurisdiction in the future, **the government does not oppose the motion on its merits.**” *Id.* at 12 (emphasis added).

Having carefully considered the parties' papers, the Court hereby GRANTS the motion for compassionate release finding extraordinary and compelling reasons warrant it. Ms. Simpson is at high risk of contracting Covid-19 and is especially vulnerable to the virus due to her age and numerous pre-existing conditions.³ See Dkt. No. 226. Ms. Simpson will not have exhausted her administrative remedies until May 22, 2020. Therefore, the Court stays the implementation of this

¹ The government's opposition states Bureau of Prison records Ms. Simpson is 63. Dkt. No. 228 at 2

² For ease of reference, all page number citations are to the ECF branded page number in the upper right hand corner of documents.

³ The CDC guidance on Covid-19 states that “older adults and people of any age who have serious underlying medical conditions might be at higher risk of severe illness from Covid-19.” See <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-at-higher-risk.html>. Based on current data, the CDC states “those at high risk for severe illness from Covid-19 include people of any age with underlying medical conditions, particularly if not controlled well, and specifically calls out diabetes. *Id.*

1 order until that time.⁴ Ms. Simpson's sentence of imprisonment is modified to time served. The
2 remaining portion of her original term of imprisonment shall be served as supervised release with
3 the special condition that Ms. Simpson be subject to home confinement, followed by the term of
4 supervised release imposed in the original sentence.

5
6 **IT IS SO ORDERED.**

7 Dated: May 11, 2020



8
9 SUSAN ILLSTON
United States District Judge

10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
United States District Court
Northern District of California

⁴ In light of this order, BOP has plenty of notice should they fail to provide to quarantine Ms. Simpson prior to her May 22, 2020 release date.